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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Secretary-General on the challenges, strategies and developments with regard to the implementation of the resolution 21/5 by the United Nations system, including programmes, funds and agencies

Report of the Secretary-General

Summary

In its resolution 21/5, the Human Rights Council welcomed the report of the Secretary-General on the contribution of the United Nations system as a whole to the advancement of the human rights agenda and the dissemination and implementation of the Guiding Principles on Business and Human Rights (A/HRC/21/21 and Corr.1). The Council requested the Secretary-General to report to the Human Rights Council at its twenty-sixth session on the challenges, strategies and developments with regard to the implementation of the resolution by the United Nations system, including programmes, funds and agencies, and to make concrete recommendations for action.

The present report identifies developments, progress and challenges in advancing the business and human rights agenda within the United Nations system. The report finds that further action is needed to embed the Guiding Principles in the strategic coordination mechanisms of the United Nations system, which requires top-level buy-in and advocacy. The report also presents the conclusions from a study carried out by the Office of the United Nations High Commissioner for Human Rights on the feasibility of a global fund to enhance the capacity of stakeholders to implement the Guiding Principles. One finding of the study is that there is strong support for such a fund among a broad range of stakeholders; however, perspectives differ on the most desirable mandate, governance model and sources of funding.

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I. Introduction

1. The unanimous endorsement of the Guiding Principles on Business and Human Rights by the Human Rights Council in June 2011 in its resolution 17/4 (hereinafter, the Guiding Principles) represented a milestone in the global effort to close governance gaps between the scope and impact of economic actors and the capacity of society to manage their adverse consequences.[1]

2. In its resolution 17/4, the Council requested the Secretary-General to prepare a report on how the United Nations system as a whole can contribute to the advancement of the business and human rights agenda and the dissemination and implementation of the Guiding Principles. In the report (A/HRC/21/21 and Corr.1), the Secretary-General considered how the business and human rights agenda, and particularly the Guiding Principles, could be effectively integrated in United Nations programmes and activities, including by embedding the issue in existing system-wide coordination and policy structures, and by building the necessary capacity of all actors on the issue of business and human rights.

3. In the report, it was found that the sheer scale of the business and human rights agenda requires concerted efforts from a variety of stakeholders, including coordinated efforts by the United Nations system as a whole (A/HRC/21/21 and Corr.1, para. 92). To that end, the report recommended that the business and human rights agenda should be embedded throughout the United Nations system at the strategic policy level.

4. The Council, in its resolution 21/5, welcomed the report of the Secretary-General and underscored the need to adopt a coordinated strategic approach to ensure the integration of the business and human rights agenda, particularly the Guiding Principles, into all relevant aspects of the work of the United Nations system, and recognized the role of the United Nations High Commissioner for Human Rights, her Office, and existing system-wide policy and coordination mechanisms, in that effort.

5. In the same resolution, the Council encouraged all relevant entities of the United Nations system to integrate the business and human rights agenda into their activities consistent with their respective mandates, including through capacity-building efforts directed at all stakeholder groups. The Council also recommended that relevant United Nations entities apply the Guiding Principles when formulating and implementing internal policies and procedures, including in investment management, procurement and partnerships with the business sector, taking into account the recommendations in the Secretary-General's report.

6. The Council requested the Secretary-General to report to the Council at its twenty-sixth session on the challenges, strategies and developments with regard to the implementation of its resolution 21/5 by the United Nations system, including programmes, funds and agencies, and to make concrete recommendations for action. The present report is prepared pursuant to that request.[2]

7. The first part of the present report examines progress and challenges with respect to embedding the Guiding Principles into key coordination mechanisms and processes,

[1] The Guiding Principles are contained in the annex to document A/HRC/17/31.

[2] A request for input was sent to all United Nations agencies, funds and specialized programmes. All Member States were also invited to submit any information they wished to provide in relation to the contribution of the United Nations system to the business and human rights agenda.

specifically in relation to development coordination, alignment of policies and procedures, and the post-2015 development framework.

8. A key finding in the 2012 report of the Secretary-General was that the lack of capacity of stakeholders at all levels is a significant obstacle to advancing the business and human rights agenda and implementing the Guiding Principles (A/HRC/21/21 and Corr.1, para. 62). In its resolution 21/5, the Council requested the Secretary-General to undertake a study of the feasibility of establishing a global fund to enhance the capacity of stakeholders to implement the business and human rights agenda. The second part of the present report presents the findings and recommendations from that study.

II. Background and context

9. The Guiding Principles on Business and Human Rights do not create any new legal obligations. Instead, they clarify and elaborate on the implications of existing standards, including the obligations of States under international human rights law with respect to preventing, mitigating and remediating adverse human rights impacts related to business activities. The Guiding Principles comprise three pillars: the State duty to protect human rights against infringements of human rights by third parties, including business enterprises; the corporate responsibility to respect human rights; and access to effective remedy for victims of business-related human rights abuses.

10. The Guiding Principles must be implemented comprehensively by both States and business enterprises in order to be given proper effect. That requires dedicated efforts at the level of individual States and business enterprises, appropriate to their particular circumstances. However, other international and domestic actors also have important roles in supporting implementation through awareness-raising, capacity-building, advocacy, tools development, and standard and policy development in line with the Guiding Principles and in accordance with their respective mandates. International and regional organizations involved in standard-setting in areas such as trade, investment, development, corporate transparency and reporting have particularly important roles to play.

11. Human rights, together with development and peace and security, form one of the three pillars of the United Nations and, as stated by the Secretary-General, the United Nations must play its part, together with other actors, in bridging the gaps between the scope and impact of economic actors and the capacity of societies to manage their adverse impacts (A/HRC/21/21 and Corr.1, para. 1). Many of the entities, agencies, funds and specialized programmes of the United Nations either work directly with business enterprises or in ways that impact the activities of economic actors. Increasingly, business is also seen as a partner in tackling global development challenges.

12. When the Council endorsed the Guiding Principles in its resolution 17/4, it also decided to establish the Working Group on the issue of human rights and transnational corporations and other business enterprises, consisting of five independent experts. The Working Group has engaged in outreach to United Nations entities, international and regional organizations, States, business organizations, civil society, trade unions, national human rights institutions and other actors to disseminate and advocate for the implementation of the Guiding Principles.[3] The Working Group has also engaged in projects with international and local partners to advance the business and human rights

[3] See reports of the Working Group on the issue of human rights and transnational corporations and other business enterprises, available from www.ohchr.org/EN/Issues/Business/Pages/Reports.aspx.

agenda.[4] However, the scale of the challenge of implementing the Guiding Principles globally is such that it requires coordinated action by all actors, including the United Nations system as a whole. The Working Group's mandate encourages coordination and cooperation with entities in the United Nations systems and other international, regional and domestic actors in efforts to build capacity and disseminate the Guiding Principles.

III. Convergence of international standards and processes

13. The unanimous endorsement of the Guiding Principles by the Council and the broad support for them from all stakeholder groups, including States, regional and international organizations, business enterprises and business organizations, and many civil society organizations globally, have established them as a common platform for accountability and progress. Global convergence of international standards and processes around the Guiding Principles and their core concepts helps to clarify, simplify and reinforce implementation by both States and business enterprises.

14. It is encouraging to note that, three years after their endorsement by the Council, there has been significant convergence around the Guiding Principles at the international and regional level (see A/HRC/21/21 and Corr.1).[5] Efforts to implement the Guiding Principles are also being made by international business organizations and individual businesses, national human rights institutions, trade unions, civil society and other actors, examples of which have been discussed at the two first annual Forums on Business and Human Rights.[6]

IV. Embedding the business and human rights agenda in the United Nations system

15. Within the United Nations, significant activities to embed the Guiding Principles have taken place. As has previously been reported (A/HRC/21/21 and Corr.1, paras. 13 and 14), the corporate responsibility to respect human rights as set out in the Guiding Principles has been incorporated into the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security of the Committee on World Food Security, and the revised Sustainability Framework of the International Finance Corporation.

16. The Office of the United Nations High Commissioner for Human Rights (OHCHR), as the focal point within the United Nations system for advancing the business and human rights agenda, has a specific role to support the implementation and dissemination of the Guiding Principles, as well as to provide guidance and advice on the interpretation of the Guiding Principles to all stakeholders, in collaboration with the Working Group. OHCHR

[4] For information on the Working Group's activities, see www.ohchr.org/EN/Issues/Business/Pages/WGEventsStatements.aspx and www.ohchr.org/EN/Issues/Business/Pages/ActivitiesAndEngagement.aspx.

[5] For activities of the European Union level, see http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/index_en.htm. For activities of the Council of Europe, see www.coe.int/t/dghl/standardsetting/hrpolicy/other_committees/hr_and_business/default_EN.asp. For work of the Organisation for Economic Co-operation and Development, see http://mneguidelines.oecd.org/. For an example of the Organization of American States, see AG/RES. 2753 (XLII-O/12).

[6] For information on the forums, see www.ohchr.org/EN/Issues/Business/Forum/Pages/ForumonBusinessandHumanRights.aspx.

continues to provide substantive and administrative support to the Working Group, and collaborates closely with the Working Group in its own programme on business and human rights to ensure the complementarity of efforts and avoid duplication.

17. The previous report of the Secretary-General found that the issue of business and human rights is not yet part of mainstream United Nations operations, not even within the human rights system itself. The report recommended that the Guiding Principles should be embedded, where appropriate, in the policy-setting agenda of the Chief Executives Board for Coordination and its subsidiary bodies (A/HRC/21/21 and Corr.1, paras. 28 and 29).

18. In the intervening period, OHCHR has advocated for the integration of the business and human rights agenda into key Office-wide efforts, in particular related to the sustainable development agenda. OHCHR also organized a high-level panel at the Council with representatives from United Nations agencies, funds and specialized programmes, to discuss the role of the United Nations system in advancing the business and human rights agenda in the context of the post-2015 sustainable development goals. However, owing to significant capacity constraints, the efforts have not succeeded in achieving effective and appropriate integration of the Guiding Principles and the business and human right agenda into key coordination mechanisms. Further work by OHCHR is needed, in particular on including the Guiding Principles as a theme in the human rights mainstreaming mechanisms.

V. Dissemination and capacity-building

19. OHCHR has continued its efforts to build capacity on the business and human rights agenda both within the United Nations system and with external actors. In 2013, OHCHR launched an online training tool on the principles for responsible contracts, which were addended to the Guiding Principles (A/HRC/17/31/Add.3, annex) and provide practical guidance to negotiators of State-investor contracts. OHCHR has also developed a comprehensive training package on the Guiding Principles on Business and Human Rights, together with a publication that provides introductory guidance to stakeholders through responses to "frequently asked questions", which will be launched in 2014. Those efforts follow the publication of a booklet containing the text of the Guiding Principles and the OHCHR Interpretative Guide on the Corporate Responsibility to Respect Human Rights,[7] which are in high demand by all stakeholders seeking to understand and implement the Guiding Principles.

20. Increasing capacity and interest are also seen at the country level, where several OHCHR country offices monitor and address the human rights impacts of business activities. OHCHR has also undertaken capacity-building at the country level with government officials and other stakeholders upon request. Following observations from field offices and a review of global trends in the human rights landscape, the issue of human rights in the economic sphere, which includes business and human rights, has been selected as one of six thematic strategies for OHCHR for the 2014–2017 cycle.

21. The Office also continues to work closely with the Global Compact, including by participating in the secretariat of the Global Compact's Human Rights and Labour Working Group.[8]

[7] HR/PUB/12/02, 2012.

[8] For more information on that work, see www.unglobalcompact.org/Issues/human_rights/Human_Rights_Working_Group.html.

22. The Global Compact, which is the main platform of the United Nations for engaging the business sector, has undertaken significant capacity-building activities through webinars, outreach with local networks and the creation of tools. In 2013, the Global Compact, in collaboration with OHCHR, revised their joint business learning tool on human rights to align it with the Guiding Principles. The Global Compact has continued to expand and build on its Human Rights and Business Dilemmas Forum, which is designed to stimulate discussion about how to manage challenging human issues to respect and support human rights.[9] In collaboration with other agencies, it has also continued to put together guidance for business enterprises on specific aspects of human rights, including human rights of women, children, and indigenous peoples.

23. The Global Compact local networks provide a platform for direct engagement with the business sector. Through the local networks, the Global Compact has supported the capacity-building of local business enterprises and other stakeholders.

24. Other United Nations entities are also undertaking significant capacity-building efforts related to their specific mandates. The United Nations Environment Programme (UNEP) Finance Initiative provides guidance to business enterprises in the financial sector on their social and environmental responsibilities, including on human rights. The Principles for Responsible Investment also provides a platform for building the capacity of business enterprises in the financial sector.

25. The United Nations Children's Fund (UNICEF) has developed tools and worked on capacity-building for States and business enterprises in the area of respecting and supporting children's rights. In 2013, UNICEF piloted a project with 45 companies and 22 consultancies to review and begin implementing the Children's Rights and Business Principles, which in important respects are aligned with the Guiding Principles; it also held workshops on children's rights and business with more than 50 transnational enterprises and 30 international consultancies. UNICEF has also worked to build capacity internally, having trained more than 300 staff members globally in corporate social responsibility. The designated Corporate Social Responsibility Unit works to raise the profile of children's rights and business at headquarters level and to support national committees and county offices in related activities and engagements.

26. However, despite these and other significant activities to build capacity within and outside the United Nations system, it is clear that the scale of the efforts made and resources available are still insufficient to meet the challenge of implementing the Guiding Principles globally. To that end, the possibility of establishing a global fund for enhancing the capacity of stakeholders to implement the Guiding Principles is discussed below.

VI. Integrating the Guiding Principles: specific areas of work within the United Nations

A. Human rights system

27. OHCHR can play a central role in the implementation of the business and human rights agenda and taking appropriate action to support the embedding and integration of the Guiding Principles into relevant focus areas of the United Nations system coordinating mechanisms (A/HRC/21/21 and Corr.1, para. 31). OHCHR also has a key role in promoting a coherent and consistent understanding of the Guiding Principles through its engagement

[9] For more information on the forum, see http://human-rights.unglobalcompact.org/.

in a number of processes within and outside the United Nations system to embed respect for human rights by business into guidelines and policy documents, and by providing advice on interpreting the Guiding Principles in response to requests from stakeholders. However, enhanced efforts are still needed in order to provide uniform and clear guidance on implementing the Guiding Principles.

28. In an effort to advance more effective implementation of the Guiding Principles in ensuring access to judicial remedy for victims of gross human rights abuses related to business, OHCHR in 2014 launched a multi-stakeholder consultative process to provide further conceptual and normative clarity on key issues and challenges related to access to judicial remedy, focusing in particular on the criminal law system.[10]

29. OHCHR and the Working Group have engaged with United Nations treaty bodies to promote the Guiding Principles. In April 2013, the Committee on the Rights of the Child issued its general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights. Other treaty bodies have also elaborated on the implications of the State duty to protect human rights in the context of business activities in observations on State parties' reports. The Working Group is currently collaborating with selected treaty bodies to further the understanding of how the Guiding Principles can be a tool for treaty bodies in the systematic and comprehensive collection and analysis of information on business and human rights in State party reporting and concluding observations, consistent with their respective mandates.

30. In addition to the Working Group and its specific mandate on the Guiding Principles, other special procedures mandate-holders are increasingly also integrating the Guiding Principles in their specific analyses of situations at the international or country level and in thematic areas. Relevant mandate holders are also increasingly issuing communications to States, and in some instances to business enterprises, on situations that involve the impacts of business on human rights. These efforts both support the identification of specific challenges faced by States and business in different operational contexts, in relation to particular issues or particular groups, and provide a means through which States and business enterprises can be made aware of their respective obligations and responsibilities.[11]

31. The Working Group has undertaken efforts to explore how the universal periodic review could take into account the business and human rights agenda, and has also initiated a project on national action plans and other strategies at the State level to implement the Guiding Principles.[12] Information on State implementation of national action plans in relation to specific State obligations to protect, respect and fulfil human rights could be taken up by stakeholders in the context of the universal periodic review.

B. United Nations system in general

32. The Secretary-General has recognized that greater attention to human rights in the United Nations system offers opportunities for integrating the business and human rights agenda, and in particular the Guiding Principles, into existing platforms and activities (A/HRC/21/21 and Corr.1, para. 38). Concerted efforts are required for that to be achieved, and the Secretary-General is confident that his intention to enhance the United Nations partnership capacity would be a big step towards this goal, as it would use the Guiding

[10] For more information, see www.ohchr.org/EN/Issues/Business.

[11] For more information, see www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx.

[12] For further information, see www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx.

Principles as one key element in helping achieve greater accountability, coherence and scale – both globally and at the country level. The Secretary-General is encouraged that significant activities to integrate the business and human rights agenda have taken place within individual entities with respect to specific aspects of business impacts on human rights. A non-exhaustive sample is provided below.

33. In 2013, the Global Compact launched a reference guide to the United Nations Declaration on the Rights of Indigenous Peoples,[13] which also reflects the responsibility to respect human rights as set out in the Guiding Principles. In its strategy for 2014–2016, the Global Compact focuses on four priorities: participant engagement, local networks, a global portfolio of issues and responsible business in support of United Nations goals and issues. These focus areas offer important opportunities for building business capacity on human rights.[14]

34. To further the alignment of government legislation, regulations, policies, plans and programmes with international standards on children's rights and business, UNICEF has contributed to the drafting and adoption of official guidance on the subject. UNICEF supports the work of the Committee on the Rights of the Child and plays an important role in disseminating and raising awareness around the Committee's general comment No. 16. UNICEF is in the process of developing technical implementation tools on children's rights and business for national Governments and a fact sheet on children's rights and business for national human rights institutions.

35. In collaboration with the Global Compact, the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) supports the Women's Empowerment Principles, which offer a platform for business to contribute to the advancement of women in the workplace, the marketplace and the community.[15] While the Women's Empowerment Principles were developed for business enterprises, they also provide a tool and platform for other stakeholders in their engagement with business.

36. UNEP is working on an environment, social and economic sustainability framework, which will set minimum standards for sustainability for UNEP and its implementing partners, with a view to identifying and managing environmental, social and economic issues. The Guiding Principles could be considered along with other relevant principles and guidance documents in the process to review the draft.

37. UNEP has also initiated a project within the UNEP Finance Initiative, a partnership with some 200 financial institutions, to draw up a report to throw more light on situations where banks, through their lending or investment activities, can cause, create or have links to adverse human rights impacts. The report is expected in 2014. The UNEP Finance Initiative has further developed an online human rights guidance tool for the financial sector and a briefing for leaders of financial institutions.

C. Activities at the country level

38. The Secretary-General has recognized that United Nations resident coordinators and country teams can play a strategically crucial role in promoting dialogue among Governments, business enterprises and civil society, and by promoting human rights due

[13] See *A Business Reference Guide to the United Nations Declaration on the Rights of Indigenous Peoples* (New York, 2013). Available from www.unglobalcompact.org/Issues/human_rights/indigenous_peoples_rights.html.

[14] See www.unglobalcompact.org/news/821-02-10-2014.

[15] See www.weprinciples.org.

diligence in the context of economic activities and ensuring that risks to vulnerable groups or communities are considered, providing technical assistance and supporting relevant research (A/HRC/21/21 and Corr.1, para. 42). The Secretary-General has recommended that resident coordinators take the lead at the national level, in collaboration with OHCHR where possible, to integrate the Guiding Principles into relevant activities (ibid., para. 43).

39. In that respect, the Secretary-General notes that some country teams have taken up the business and human rights agenda and integrated the Guiding Principles or elements thereof into their work, specifically in the context of policies relating to development of the extractive industries and potentially adverse impacts associated with that sector. However, a coordinated strategy for ensuring that resident coordinators and country teams integrate the business and human rights agenda in their work is still lacking and, in its absence, integration at the country level still appears to be fragmented. It would be helpful for human rights advisers deployed at the request of resident coordinators to receive targeted training in business and human rights. However, further coordinated action at the executive level of the United Nations will also be needed.

D. Trade and investment

40. The Guiding Principles can help to ensure that business-focused trade and investment policies and standards contribute to, and do not result in advance impacts on, human rights. The former Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises recognized in particular the issue of State-investor contracts as a key potential lever to identify, prevent and mitigate adverse human rights impacts (see A/HRC/17/31/Add.3, annex).

41. The United Nations Conference on Trade and Development (UNCTAD) can advance the business and human right agenda by ensuring integration of the Guiding Principles into policy guidance and capacity-building efforts. For example, in 2013, UNCTAD organized a conference on corporate social responsibility for business participants, in which the Guiding Principles were featured.

42. Within the United Nations system, the United Nations Commission on International Trade Law (UNCITRAL) has a mandate to develop rules and regulations governing international trade, in collaboration with the World Trade Organization. UNCITRAL offers an important entry point for integrating the Guiding Principles. UNCITRAL also has significant technical expertise on the issue of corporate and trade law, and would be well placed to take the lead on examining how the Guiding Principles are implemented by States through law-making at national levels. UNCITRAL could support activities of the Working Group on business and human rights on the issue of State legislative implementation, in the context of the Working Group's activities on State national action plans for the implementation of the Guiding Principles. That could help close a significant information gap on the level of implementation of the Guiding Principles, and support capacity-building with States.

E. Labour

43. The International Labour Organization (ILO) continues to contribute to the implementation of all three pillars of the Guiding Principles as part of its specific mandate within the United Nations system, drawing on its tripartite structure and standard-setting and supervisory machinery. ILO continues to provide technical support on the protection of workers' rights and sustainable enterprise development to its tripartite constituents in its member States. It also builds the capacity of employers' and workers' organizations on a

large range of issues relevant to the business and human rights agenda, which include rights at work, social dialogue and collective bargaining, and occupational safety and health.

44. Through its Helpdesk for Business on International Labour Standards, ILO provides information and tools for managers and workers interested in aligning corporate policies and practices with international standards, including the ILO Declaration on Fundamental Principles and Rights at Work. An updated leaflet issued by the ILO Helpdesk refers to the Guiding Principles.

45. A particularly noteworthy ILO intervention involves Bangladesh, where ILO facilitated a tripartite action plan on fire safety for the ready-made garment sector. Early in 2014 the ILO-International Finance Corporation Better Work Programme was also launched in Bangladesh.

46. Collaboration between ILO and human rights mechanisms, including OHCHR, could be further strengthened to ensure alignment and bring clarity to the relationship between the Guiding Principles and national legislation and ratified ILO conventions. Further collaboration at the country level to reinforce capacity could also be explored.

F. Development

47. The Secretary-General has previously recommended that the United Nations Development Group should take the lead in advancing integration of the Guiding Principles into global development efforts, through the human rights mainstreaming mechanism (A/HRC/21/21 and Corr.1, para. 46).

48. The United Nations Development Programme (UNDP) already supports States in their efforts to ground national development programmes and policies in human rights, in particular by focusing on the principles of non-discrimination, participation and accountability and collaborating with national human rights institutions. There is, however, a need to explicitly integrate the business and human rights agenda into UNDP activities designed to foster economic growth and private-sector development, to prevent and mitigate potential negative impacts.

49. In that respect, current work in UNDP to mainstream human rights provides important channels for the integration of the Guiding Principles. For example, the Programme and Operations Policy and Procedure require that all prospective private-sector partners undergo environmental, social and governance screening, using the UNDP risk assessment tool, which includes criteria relating to the rights of indigenous peoples. Furthermore, in 2013, UNDP launched the Global Initiative for Extractive Industries for Sustainable Development. Through the initiative, UNDP will support capacity-development for national governance of extractive industries through, inter alia, facilitating and convening dialogues on extraction with affected populations, especially indigenous peoples, the private sector and Governments. That offers an important entry point for the Guiding Principles.

50. The World Bank, and its private-sector lending arm, the International Finance Corporation, provide other important avenues for advancing the business and human rights agenda. The Corporation has already incorporated elements of the Guiding Principles into its social and environmental Sustainability Framework. The current review of the World Bank's social safeguard policies offers an opportunity for integrating key elements of the Guiding Principles to prevent and mitigate the risk of negative human rights impacts in relation to the Bank's lending activities.

G. Humanitarian action

51. As previously recognized by the Secretary-General, non-State actors, including business enterprises, are increasingly involved in post-conflict or disaster construction work and integration of the Guiding Principles is therefore relevant to ensure coherence and reduce risk of adverse human rights impacts (A/HRC/21/21 and Corr.1, para. 56). Private-sector accountability for adverse human rights impacts in situations of conflict, occupation or emergency is essential in all cases. The business and human rights agenda is also relevant in the context of the development of economic activities aimed at income-generation for people living in long-term refugee situations. In that context, the Guiding Principles should be integrated into relevant partnerships and programmes, including through collaboration between the United Nations High Commissioner for Refugees and OHCHR, as relevant.

VII. Aligning United Nations policies and procedures with the Guiding Principles

52. The 2012 report of the Secretary-General noted that like any other organization conducting commercial transactions or engaging in partnerships with business enterprises, the Guiding Principles should apply to the internal policies and procedures of the United Nations, and should be implemented effectively (A/HRC/21/21 and Corr.1, para. 75). The Secretary-General further noted that internal alignment should focus on the responsibility to avoid contributing to human rights abuses, or being involved with such abuses through relationships with business entities.

A. Investment management

53. As noted in the report of the Secretary-General in 2012, the United Nations Joint Staff Pension Fund has committed to integrating the ten Global Compact principles in its activities and is a member of the United Nations Principles for Responsible Investment (A/HRC/21/21 and Corr.1, paras. 80 and 81). However, its risk management policy for investments does not currently consider human rights or environmental and social risks.

54. OHCHR has confirmed that the Guiding Principles apply to financial institutions, including private and public institutions engaged in investments and asset management.[16] A number of good practices exist in this regard, such as exclusion lists for certain high-risk activities and industries, undertaking due diligence prior to investments and exercising active ownership. Alignment with the Guiding Principles would help to avoid and mitigate human rights risks from investment activities and avoid any reputational risks from investments entered into in the name of the United Nations.

B. Procurement

55. The Procurement Division of the United Nations has undertaken initiatives to promote sustainability in procurements, including by raising awareness of the Global

[16] Letter to the Chair of the Working Party of the Organisation for Economic Co-operation and Development of 27 November 2013. Available from www.ohchr.org/Documents/Issues/Business/LetterOECD.pdf.

Compact and developing a non-binding Supplier Code of Conduct.[17] The Code of Conduct references human rights; it does not, however, reference the expected standard of conduct of the Guiding Principles, which includes undertaking human rights due diligence and addressing adverse human rights impacts. As noted in the 2012 report of the Secretary-General, a revision of the Supplier Code of Conduct to reflect the Guiding Principles would be beneficial in this regard (A/HRC/21/21 and Corr.1, para. 84).

56. Other United Nations entities, however, also procure goods and services. For example, the United Nations Office for Project Services (UNOPS) is a central resource for the United Nations system for procurement and contracts management and procures for both United Nations agencies and external partners. While it uses the non-binding Supplier Code of Conduct, it also states explicitly that it "does business only with those vendors sharing its respect for fundamental human rights, social justice, human dignity and equal rights of men and women, as enshrined in the Charter of the United Nations."[18] That practice could be emulated by other agencies involved in procurement activities, where relevant.

57. Within private-sector enterprises and a number of State procurement divisions, binding codes of conduct for suppliers are now the standard. It would be beneficial for the United Nations Office for Partnerships to investigate the extent to which the current code of conduct reflects general best practices with regard to managing human rights risks from business relationships, and make recommendations to the Secretary-General for possible future revisions.

C. Partnerships

58. The United Nations is increasingly engaging in partnerships with business enterprises for the promotion of the goals and values of the United Nations. That provides important opportunities for promoting corporate respect for human rights, but also increases the risk of being linked to actors potentially involved in human rights abuses (A/HRC/21/21 and Corr.1, paras. 88 and 90).

59. The Secretary-General's intent to enhance the United Nations partnership capacity arose from this new reality. The aim is to achieve greater accountability, coherence, efficiency and scale, and a more supportive enabling environment for United Nations partnership activity. The Guiding Principles would contribute to building a normative framework, including, for example, in the updating of guidelines on partnerships, between the United Nations and business.

60. The Global Compact serves as a key entry point for the engagement of business with the United Nations. The Secretary-General notes with appreciation the Global Compact's efforts to use the annual meetings of Private Sector Focal Points in order to spread awareness of the Guiding Principles.

VIII. Capacity-building of relevant actors — the feasibility of a global capacity-building fund on business and human rights

61. The Secretary-General's 2012 report suggested that the need to create a significant capacity and funding base to enable large-scale interventions in the area of business and

[17] For initiatives and efforts reported in 2012, see A/HRC/21/21. Information on relevant policies is available from www.un.org/depts/ptd/pdf/englishb.pdf.

[18] From www.unops.org/english/whatwedo/services/procurement/pages/procurement.aspx.

human rights would require the involvement and support of stakeholders outside the United Nations (A/HRC/21/21 and Corr.1, para. 74). The Secretary-General recommended (ibid., para. 101) that, given the scale of the implementation challenge and the resource implications of meeting it:

> The feasibility of establishing a global fund on business and human rights linked to the United Nations, with multi-stakeholder engagement, should be considered. The primary purpose of such a fund would be, both within and outside of the United Nations system, to enhance the capacity of stakeholders seeking to advance the implementation of the Guiding Principles.

62. In response to the request from the Council in its resolution 21/5, the Secretary-General undertook feasibility study, the full version of which is contained in an addendum to the present report, with the aim of advancing multi-stakeholder dialogue and action concerning a new fund in the area of business and human rights. The main findings from the study are presented below.

63. The study reviews a variety of existing United Nations funds in the area of human rights, including voluntary funds that focus on providing financial support to civil society actors who assist victims of human rights violations, voluntary funds to support OHCHR activities at Headquarters and in the field, and other funds, including the Special Fund established by the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. All funds administered by OHCHR are governed in accordance with the Financial Regulations and Rules of the United Nations and may receive voluntary contributions from Governments, intergovernmental and non-governmental organizations and other private or public entities.[19]

64. The study also examines other funds managed by other United Nations entities, for example the United Nations Democracy Fund, established to strengthen the voice of civil society, promote human rights and encourage participation in democratic processes. Another model is provided by the United Nations Peacebuilding Fund, which provides resources to the United Nations Secretariat and agencies for the implementation of projects developed in identified priority countries.

65. The experience of these and other United Nations trust funds should inform further dialogue amongst Member States and other actors concerning the potential for a new dedicated fund to advance implementation of the Guiding Principles.

66. In addition to established voluntary trust fund mechanisms, the United Nations has continued to expand the reach and impact of its work through the creation of new public-private partnerships aimed at advancing key international objectives, for example, in the area of public health with the establishment of funds such as the Global Fund to Fight AIDS, Tuberculosis and Malaria and the Global Alliance for Vaccines and Immunization. Those approaches should also be considered.

67. Based on informal consultations, written inputs[20] and a formal consultation during the second annual Forum on Business and Human Rights in December 2013, the study finds that there is broad support from all stakeholder groups for the proposal that a new fund in the area of business and human rights would be a potentially useful mechanism. However, there is also a diversity of views concerning potential priorities and governance

[19] A summary of all voluntary funds administered by OHCHR is available from: www2.ohchr.org/english/ohchrreport2012/web_en/allegati/12_Funds_administered_by_OHCHR.pdf.

[20] As part of preparing the study, OHCHR issued an invitation to all Member States to provide written inputs on the issue and invited all other relevant stakeholders to provide input through a public call for inputs on the OHCHR website.

arrangements, which will require careful consideration and further dialogue involving all stakeholders.

68. Most stakeholders who participated in the consultation process favour a mandate that would support a broad range of capacity-building activities at local, national and international levels across all stakeholder groups.

69. With respect to the types of activities such a fund could support, nearly all submissions noted the value of awareness-raising and training activities on the Guiding Principles for different stakeholder. However, there was less agreement on other issues, including: whether the mandate of the fund should be broadly focused on all three pillars of the Guiding Principles or whether it should be focused on one particular pillar or issue; whether it should primarily support projects, including ongoing projects of the Working Group, or whether it should also support dissemination of documents in multiple languages and the participation of a broader range of stakeholders in United Nations meetings related to business and human rights; and whether it should support one-off activities or focus exclusively on projects that are replicable and could be scaled up in the future.

70. With respect to the aim of mainstreaming the Guiding Principles throughout the United Nations system, most submissions noted that, while OHCHR and other United Nations actors would be critical partners in ensuring the effective implementation of a fund in the area, priority should not be given to building the capacity of the United Nations, as that could draw resources away from other actors with limited ability to access funding through other means. It was noted, however, that a fund should facilitate the engagement of United Nations country teams and all other components of the United Nations system in capacity-building efforts relating to business and human rights, especially in developing countries.

71. Stakeholder views concerning the most effective and appropriate governance mechanism for a proposed new fund varied considerably. A majority of submissions indicated that OHCHR should be a key actor in administering a fund in this area. Some stakeholders also stated that the Working Group should play a central role in shaping a fund's strategic approach. Several submissions also stressed the importance of ensuring an efficient governance structure and limiting administrative costs.

72. There is less agreement among stakeholders concerning the extent to which a fund in this area should follow established United Nations voluntary trust fund models. Some submissions indicated that multi-stakeholder governance, with special emphasis on the participation of business in decision-making, was of importance in engaging a significant number of businesses as financial contributors to a fund and ensuring its long-term impact. It was suggested, for example, that a multi-stakeholder advisory board could be established to provide overall strategic guidance, but it should not have authority for decision-making on individual projects to be supported or in matters relating to who can contribute or benefit from funding. Others proposed a "board of trustees" model based on established OHCHR-administered voluntary trust funds.

73. With respect to monitoring and evaluation, in some submissions, it was suggested that grants could potentially be effectively administered and evaluated through existing United Nations agencies, including at national level, in order to minimize overhead costs. It was also suggested that an external evaluation of a fund after five years of operations should be planned from the outset.

74. On the subject of funding sources, stakeholders in their submissions were largely in agreement that a new fund in the area should be able to accept financial contributions from any actor, including States, businesses, philanthropic organizations and individuals. The importance of ensuring full transparency of donors and allocation of resources to individual

projects was also widely highlighted as being key to establishing and maintaining a fund's legitimacy and independence.

75. Several different funding governance models were suggested. To avoid potential conflicts of interest involving individual donors, some stakeholders favoured a model whereby governance and resource allocation would be completely independent from donors to a fund. Other stakeholders suggested that involving donors more directly was necessary, both to attract donations, in particular from the private sector, and to ensure effective decision-making and long-term impact. Some suggested that all contributions should be non-earmarked to prevent the necessity of limiting the percentage of overall funding from any individual donor. Others suggested that further consideration should be given to the possibility of earmarked funding given the potential for attracting more donors to specific aspects of a fund's mandated activities.

76. With respect to the issue of donors providing resources for a fund in addition to their commitments in other areas, some stakeholders suggested that competition for limited resources was inevitable and therefore not a matter for further discussion. Others proposed that more consultation was needed in order to determine the extent to which significant additional financial resources could be secured to support a new fund. From that viewpoint, it was stressed that resources for a fund focused on the implementation of the Guiding Principles should not jeopardize the maintenance of existing funding levels for ongoing human rights activities in other areas. The diversity of views of stakeholders on that issue indicates that more consultation is needed to clarify outstanding questions relating to funding sources.

77. As the Council moves forward in its deliberations, it is noteworthy that there appears to be broad agreement among stakeholders that a new fund would be a useful mechanism to advance implementation of the Guiding Principles and that such a fund should be able to accept financial contributions from any actor, including States, businesses, philanthropic organizations and individuals. There is also broad agreement on the importance of ensuring full transparency of donors and allocation of resources to individual projects as key to establishing and maintaining a fund's legitimacy and independence.

78. However, as the consultation process has indicated, there remains a diversity of views on a number of core issues, such as the desirable scope of a potential fund's mandate, criteria for eligibility and governance models, which can only be resolved through further study and multi-stakeholder dialogue.

79. More focused dialogue involving all actors is needed in order to make progress. It is therefore recommended that the High Commissioner for Human Rights lead a multi-stakeholder consultation process, with the aim of developing further recommendations concerning the establishment of a new fund on implementation of the Guiding Principles.

80. The process should involve all relevant stakeholder groups, including representatives of Governments, the private sector, civil society and grass-roots organizations and the Working Group and other relevant experts from within and outside the United Nations system. The experience of existing United Nations trust funds, public-private partnerships and other funding models administered through multi-stakeholder governance structures should inform the process. Existing venues for consultation, such as the Forum on Business and Human Rights, should be utilized to test preliminary proposals with a broad stakeholder base.

IX. Conclusions and recommendations

81. **Notable efforts have taken place within individual United Nations agencies, funds and programmes to integrate the business and human rights agenda, in particular the Guiding Principles on Business and Human Rights, into their work as relevant. A number of resident coordinators and country teams have also taken up the agenda in their work at the national levels. However, overall, the United Nations appears to be lagging behind some other international and regional organizations in integrating the business and human rights agenda and implementing the recommendations made by the Secretary-General in 2012. Further coordinated efforts are needed at the executive levels of the Organization to ensure that the United Nations approaches this task in a systematic and strategic manner. The following recommendations are made in that context.**

82. **The business and human rights agenda of the United Nations and the Guiding Principles should be embedded throughout the United Nations systems, including agencies, funds and specialized programmes at the strategic policy level. As the focal point for the business and human rights agenda within the United Nations system, OHCHR has a mandate to mainstream the Guiding Principles in the United Nations system through engagement with system-wide coordination mechanisms and the United Nations Development Group human rights mainstreaming mechanism, which should also be seized of this agenda, as well as other mechanisms identified in the present report.**

83. **OHCHR should increase its efforts to disseminate and promote capacity-building within the United Nations system at the field level, including through efforts alongside United Nations country teams to build capacity. In order to do so, ways in which to secure sufficient funding to support increased efforts should be explored.**

84. **OHCHR should continue to serve as the focal point for providing uniform advice, guidance and clarification on issues relating to the interpretation of the Guiding Principles to all stakeholders both inside and outside the United Nations system, in collaboration with the Working Group on the issue of human rights and transnational corporations and other business enterprises.**

85. **OHCHR should increase its efforts to provide public training materials and other resources on the Guiding Principles to support implementation by both States and business enterprises.**

86. **All United Nations agencies, funds and specialized programmes should review the relevance of the Guiding Principles to their mandates and activities, and should embed the Guiding Principles in their policies and processes where relevant.**

87. **United Nations resident coordinators and country teams, given their critical role in many countries, should increase their efforts to ensure the coordination of business and human rights and the integration of the Guiding Principles into planning and advocacy efforts at the national level, including, where relevant, into national development assistance frameworks, and, wherever possible, with the engagement of national human rights institutions and Global Compact local networks in those efforts.**

88. **The Organization's approaches to investment management, procurement and partnerships with the business sector should be reviewed to ensure that they meet current, globally recognized good practices with regard to the identification and management of human rights risks, as reflected in the Guiding Principles. The**

Organization should look to external entities for examples of good practice in that regard.

89. The Global Compact provides a key platform for engaging with the private sector and sharing of knowledge and best practices among business enterprises on the implementation of the Guiding Principles. The Global Compact should engage systematically through its local networks to identify implementation challenges, potential tools and good practices, and to disseminate learning and facilitate sharing of experiences.

90. UNCITRAL is well placed to review the extent to which the Guiding Principles are incorporated into national legislation and regulations governing business conduct. UNCITRAL is encouraged to collaborate in that regard with the Working Group on the issue of human rights and transnational corporations and other business enterprises.

Member States

91. Member States, in compliance with their responsibility to ensure policy coherence as set out in the Guiding Principles, should ensure that they consistently engage with the United Nations in such a way as to encourage the integration of the Guiding Principles within the United Nations system, and do not constrain it.

Issue of a global fund to support capacity-building of all actors to implement the Guiding Principles

92. The Secretary-General notes that stakeholders across categories express support for a new global fund to enhance the capacity of stakeholders to implement the Guiding Principles. However, there is still a need to consult further with stakeholders to explore differing views of the desirable mandate, governance structure and sources of funding for a fund in that area.

93. It is recommended that OHCHR leads a multi-stakeholder consultation process to develop concrete proposals for a new fund in the area, and to present specific models for consultation with all stakeholders at the third annual Forum on Business and Human Rights in December 2014. The consultations should involve all relevant stakeholder groups, including representatives of governments, the private sector, civil society and grass roots organizations and the Working Group on the issue of transnational corporations and other business enterprises, and other relevant experts from within and outside the United Nations system.

94. Following those consultations, OHCHR should organize an expert-level meeting in early 2015 to develop a concrete recommendation for the structure and mandate of a fund, to be proposed to the Council in June 2015 for its consideration.